

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

CARLOS LEDEZMA,

Complainant,

and

THERMOFLEX CORPORATION,

Respondent.

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Charge No. 2009CF0637
EEOC No. 21BA83021
ALS No. 09-0516

Judge Reva S. Bauch,
Presiding

RECOMMENDED ORDER AND DECISION

This matter is before the Commission on Respondent's Motion to Dismiss for Want of Prosecution. Complainant had an opportunity to file a response but failed to do so. Accordingly, this matter is now ready for disposition.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

FINDINGS OF FACT

The following facts were derived from the record file in this matter.

1. On February 4, 2010, I ordered the parties to serve their initial discovery requests by March 4, 2010, and to appear for a discovery status hearing on May 6, 2010 at 10:00 a.m.
2. Respondent's counsel served written discovery on Complainant on March 1, 2010 at Complainant's last known address.
3. On March 1, 2010, Respondent's counsel filed a Certificate of Service with the Commission evidencing that she had served written discovery on Complainant.

4. To date, Complainant has not responded to Respondent's written discovery.
5. To date, Complainant has not served any discovery on Respondent.
6. On May 6, 2010, Respondent's counsel appeared for the scheduled status hearing. Complainant failed to appear.
7. On May 6, 2010, I entered an Order setting a status hearing for July 8, 1020 at 10:00 a.m. I also ordered Respondent to serve a copy of my May 6, 2010 Order on Complainant, and file a proof of service with the Commission.
8. On May 7, 2010, Respondent's counsel served my May 6, 2010 Order on Complainant at his last known address *via* U.S. Postal Service, and filed the associated Certificate of Service with the Commission.
9. On May 24, 2010, Respondent's counsel sent a letter to Complainant regarding his failure to appear at the status hearing, or to respond to Respondent's discovery. In the letter, Respondent's counsel asked Complainant to advise her whether Complainant desired a conference to discuss discovery issues.
10. The May 24, 2010 letter was sent *via* U.S. Postal Service, Certified Mail, Return Receipt Requested. The receipt was returned to Respondent's Counsel showing that the letter was delivered on May 27, 2010, and that Joan Carlos Ledezma signed the receipt of service.
11. To date, Complainant has failed to respond to Respondent's May 24, 2010 letter.
12. On July 8, 2010, Respondent's counsel appeared for the scheduled status hearing. Complainant failed to appear.
13. At the July 8, 2010 status hearing, I entered an Order setting a briefing schedule for Respondent's Motion to Dismiss for Want of Prosecution.
14. I ordered Respondent to serve a copy of my July 8th Order on Complainant,

at his last known address, and file a proof of service with the Commission.

15. On July 8, 2010, Respondent's counsel served my July 8, 2010, Order, via U.S. Postal Service, on Complainant, and also filed the associated Certificate of Service with the Commission.

16. To date, Complainant has not filed a response to the Motion to Dismiss.

CONCLUSIONS OF LAW

1. A complaint may be dismissed when a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance or unreasonably refuses to comply with a Commission Order or otherwise engages in conduct which unreasonably delays or protracts proceedings.

2. Since Complainant has failed to appear and has failed to comply with several Commission Orders, the appropriate sanction is dismissal of the Complaint, and the underlying charge, with prejudice.

DISCUSSION

Under Commission procedural rules, an Administrative Law Judge may recommend to the Commission that a complaint be dismissed where a party fails to appear at a scheduled status hearing, unreasonably refuses to comply with a Commission Order or otherwise engages in conduct which unreasonably delays or protracts proceedings. See **56 Ill. Admin. Code §5300.750(e)**.

A fundamental principle governing practice before the Commission is that complainants must diligently pursue their cases once they are docketed with the Commission. Complainant has failed to appear. He has also failed to comply with several Commission Orders. It appears that Complainant has simply abandoned his claim in this case. As such, it is appropriate to dismiss his Complaint, with prejudice. **Aceves and Everlast Concrete, Inc. and Artech Concrete, Inc., IHRC, 12187, May 18, 2005.**

In addition, Complainant has not filed any response to the Motion to Dismiss. The Commission has held that a dispositive motion should be granted where it appears on its face to be valid and the Complainant has failed to file a response. **Jones and Burlington Northern Railroad, IHRC, ALS No. 1704, June 23, 1986.**

RECOMMENDATION

I recommend the Commission dismiss the Complaint, and the underlying charge, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: August 18th, 2010